



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0184]

Hours of Service of Drivers: PTS Worldwide, Inc.; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; denial of application for exemption.

SUMMARY: FMCSA announces its decision to deny the exemption request from PTS Worldwide, Inc. (PTS). PTS sought an exemption from the hours-of-service (HOS) requirement for drivers utilizing the sleeper-berth (S/B) exception. PTS transports highly sensitive cargo for the Department of Defense (DOD) and proposes that its team drivers be permitted to obtain 10 hours in the S/B in two periods, neither less than 4 hours long. This would allow the driver to split the required 10 hours into segments of 4/6, 5/5, or 6/4 hours. FMCSA analyzed the exemption application and public comments, and determined that the application lacked evidence that would ensure an equivalent level of safety or greater would be achieved absent such exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

[Viewing Comments and Documents](#)

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to www.regulations.gov and insert the docket number, FMCSA-2019-0184 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Agency's HOS rules (49 CFR part 395) generally require operators of commercial motor vehicles (CMVs) transporting property to obtain 10 consecutive hours off duty before they can drive again after they accumulate the maximum 11 hours of driving or reach the end of the 14-hour duty period, whichever comes first (49 CFR 395.3). However, drivers whose CMV is equipped with a qualifying sleeper berth (S/B) may accumulate the equivalent of 10 consecutive hours off duty in two separate periods, one of at least 8 (but less than 10) consecutive hours in the S/B, and another of at least 2 consecutive hours off duty, whether in the S/B, off duty, or any combination thereof. It does not matter which of these two periods comes first. When the driver has obtained the two qualifying periods, the S/B rule provides the driver more on-duty and driving time.

PTS (USDOT 1835654) transports sensitive Department of Defense (DOD) cargo, including ammunition and explosives, in interstate commerce. For security reasons, this transportation requires a team of two drivers. PTS seeks by exemption to allow its team drivers to split the equivalent of 10 hours off duty into two S/B periods, neither less than 4 hours long. This would allow splits of 4/6, 5/5, or 6/4 hours. The request is limited to team operations and is in no way a request to apply any such exemption to solo driver operations.

PTS states that its team drivers travel over 1,100 miles per 24 hours, and average 60 hours on duty per week. After 5 weeks on the road, PTS drivers receive a week off duty at home. PTS asserts that due to the nature of its business, these drivers would be more alert if allowed to take shorter rest periods in the S/B. It believes that the shorter period would allow PTS drivers to obtain nighttime hours in the S/B and thereby minimize driver fatigue. PTS states that its vehicle and driver safety record is better than

the national average and that it has one of the best safety, security, and service records of all DOD arms and ammunition transporters. All power units are equipped, and any new power units will be equipped, with on-board electronic recorders to track driving and on-duty time, and all power units are governed to 70 miles per hour.

IV. Method to Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, PTS offers to split 10 off-duty hours into two periods, neither less than 4 hours long. This would allow splits of 4/6, 5/5, or 6/4 hours. In addition, the PTS request would be limited to team driver operations. PTS' exemption application references a study concerning the effects on sleep that found sleeper-berth flexibility to be a better choice than consolidated daytime sleep when consolidated nighttime sleep is not possible. PTS referenced additional studies that identified sleeper berth flexibility as a contributor to normalizing sleeping patterns and reducing fatigue. PTS requests the exemption be granted for the maximum allowable period (5 years). A copy of PTS's application for exemption is available for review in the docket for this notice.

V. Public Comments

On October 16, 2019, FMCSA published notice of this application and requested public comments (84 FR 55376). The Agency received 20 comments. The Commercial Vehicle Safety Alliance (CVSA) and Boyle Transportation strongly opposed the exemption request. CVSA commented that "before FMCSA makes a determination on this exemption request, the Agency should conduct the originally planned pilot program on this issue and consider data collected in the pilot program in the decision. The pilot program is necessary to study the effects of various S/B splits on driver fatigue. Without

the results of a pilot program or further study, it isn't possible for FMCSA to determine if PTS can maintain an equivalent level of safety under the proposed exemption."

Boyle Transportation stated that the exemption application would increase the risk of crashes, and that PTS has not shown how it would ensure an equivalent level of safety if granted the exemption. Boyle urged FMCSA to reject PTS' request because if granted it would create an increased risk of crashes among those professional drivers who elect to use a S/B split that affords them less than 8 hours of consolidated sleep. Boyle further added that such a practice is unacceptable given the inherent danger of much of the material being transported (Division 1.1, 1.2, 1.3 and 1.4 explosives) and the unsafe conditions it would create for other professional drivers, military service members and DOD civilians and contractors engaged in loading and unloading operations as well as the public.

Conversely, the Truckload Carriers Association (TCA) supported the PTS exemption request and stated the following: "PTS believes, as have others studying HOS and S/B flexibility, that this would reduce fatigue and provide safer environment on the roadways." TCA fully concurred with that sentiment.

Of the 17 other individuals who filed comments, 12 supported the request, 4 opposed it, and one had no position either for or against the request. One commenter stated that it would be irresponsible to allow PTS to experiment with the S/B provision while transporting Division 1.1, 1.2 and 1.3 explosives as the issues associated with the lack of proper rest is exponentially compounded creating a significant risk to the public and the drivers operating the equipment transporting the "sensitive" DoD materials. A few individuals favored allowing all segments of the trucking industry to use the S/B splits PTS requested.

VI. FMCSA Safety Analysis and Decision

FMCSA has evaluated PTS' application and the public comments and decided to deny the exemption. When the Agency established the rules mandating HOS, it relied upon research indicating that the rules improve CMV safety. These regulations put limits in place for when and how long an individual may drive, to ensure that drivers stay awake and alert while driving, and on a continuing basis to help reduce the possibility of driver fatigue.

As CVSA and Boyle Transportation indicated, the PTS application does not provide an analysis of the safety impacts the requested exemption from the HOS regulations may cause. It also does not provide countermeasures to be undertaken to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulations. In fact, the countermeasures it described were simply the split S/B provisions PTS requested.

The Agency cannot ensure that the exemption would achieve the requisite level of safety. The most recent research and data suggests that the longer sleeper berth period needs to be at least seven hours in duration, if all the other variables (e.g., daily driving time limits, weekly driving time limits, etc.) in the HOS regime remain unchanged. And PTS has not indicated in its application a plan to change any of those variable. PTS' application must be judged based on the exemption standards in 49 CFR Part 381. As indicated above, PTS' application fails to meet those standards. The application is therefore denied.

James A. Mullen,
Acting Administrator.